

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

|                               |   |                                     |
|-------------------------------|---|-------------------------------------|
| FREDERICK J. MERSHAD, et al., | : |                                     |
|                               | : |                                     |
| Plaintiffs,                   | : | Case No. 3:04CV432                  |
|                               | : |                                     |
| vs.                           | : | Magistrate Judge Sharon L. Ovington |
|                               | : | (by consent of the parties)         |
| LIBERTY MUTUAL INSURANCE      | : |                                     |
| COMPANY, et al.,              | : |                                     |
|                               | : |                                     |
| Defendants.                   | : |                                     |
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**ORDER**

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This case is before the Court upon Defendants' Motion to Decide Coverage Issue Prior to Damages or, in the Alternative, Proposed Discovery Dates (Doc. #19), and Defendants' Motion for Summary Judgment (Doc. #20).

On March 14, 2006, the Court directed Plaintiffs to show cause why each of these Motions should not be granted either on the merits or due to Plaintiffs' failure to oppose them. (Doc. #21). Plaintiffs' new counsel explains that she did not receive service of Defendants' Motions and was completely unaware that either Motion had been filed until she received an e-mail from co-counsel on March 16, 2006. (Doc. #22 at 1-2). Plaintiffs do not oppose Defendants' Motion to Decide Coverage Issues Prior to Damages. (Doc. #22 at 3). Plaintiffs represent that Defendants' counsel does not oppose granting Plaintiffs an extension to April 11, 2006 to respond to Defendants' Motion for Summary Judgment. (Doc. #22 at 2).

Accordingly, Defendants' Motion to Decide Coverage Issues Prior to Damages is well

taken; the Court will issue an Amended Scheduling Order after ruling on the parties' summary-judgment contentions. In addition, for good cause shown, Plaintiffs' requested extension of time to respond to Defendants' Motion for Summary Judgment will be granted.

**IT IS THEREFORE ORDERED THAT:**

1. Defendants' Motion to Decide Coverage Issue Prior to Damages (Doc. #19) is GRANTED, and Defendants' Alternative Request Regarding Proposed Discovery Dates (Doc. #19) is DENIED as moot;
2. The Court's Preliminary Pretrial Order (Doc. #9) is VACATED, and an Amended Scheduling Order will issue, if necessary, after the parties' contentions regarding summary judgment have been resolved; and
3. **On or before April 11, 2006**, Plaintiffs' shall file their response to Defendants' Motion for Summary Judgment (Doc. #20), and Defendants may thereafter file a Reply within the time limits set by S.D. Ohio Civ. R. 7.2(a)(2).

March 30, 2006

s/ Sharon L. Ovington  
Sharon L. Ovington  
United States Magistrate Judge